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(For Petitioner)

In re Application of  
Nate Mullen  
Application No. 09/738,024

:  
: DECISION  
: DISMISSING PETITION

This is in response to the "Petition For Access," to the above noted application<sup>1</sup> filed June 28, 2001, by James H. Fritz on behalf of Focus Industries, Inc. Applicant was served with a copy of the petition and petitioner was served with a copy of the response to the petition.

The petition is **DISMISSED**.

Petitioner requests access to the above-identified application and the application's status, arguing that a demand letter dated May 2, 2001 sent by Joseph A. Yanny on behalf of Unique Lighting, Inc. to petitioner interferes with petitioner's business or customers. The demand letter on its face does not indicate that copies of the letter have been sent to petitioner's clients.

A member of the public may be entitled to access if "special circumstances" are shown which warrant a grant of access under 35 U.S.C. § 122. See Manual of Patent Examining Procedure (MPEP), Section 103. The use of such application to interfere with the business of others may be such special circumstances. Ex parte Bonnie-B Co. Inc., 1923 C.D. 42; In re Application for Trimless Cabinets, 128 USPQ 95 (Comm'r Pats. 1960); and In re Crossman, Kenrick, and LeMieux, 187 USPQ 367 (PTO Sol. 1975).

Patent applicants clearly have the right to inform the world of any pending applications and its intent to enforce any patent which issues, Trimless Cabinets, supra. The question is whether the applicants "crossed the line" and interfered with Unique Lighting, Inc.'s business relationship with its customers prior to the issuance of a patent.

Applicant in a response by Michael A. DiNardo, filed July 13, 2001, oppose the release of status information and access to the above noted application. The opposition notes that the letter to petitioner does not mention any communication to petitioner's customers and the absence of any evidence of loss in the petition.

No direct evidence on the actual loss of business due to the applicants' statements has been

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<sup>1</sup> Applicant's response to petitioner revealed the serial number and named inventor. Although, the serial number was obscured on the header of applicant's response it was retained in the body of the response in the copy sent to the petitioner.

presented with the petition. In the absence of direct evidence to the contrary, it does not appear that the applicants' statements exceeded the bounds of propriety, or amounted to anything more than fair notice of its patent position. Ultimately, petitioner must ascertain whether their own activities constitute matter within the public domain or patentable subject matter since the Office cannot provide an advisory opinion of what subject matter might ultimately be patented.

The request is DISMISSED, but maybe renewed with evidence to establish that there has been improper interference and actual loss of business by Unique Lighting, Inc.

Any correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents  
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By FAX: (703) 872-9005  
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(For Applicant0